

Honorable Abraham Ribicoff, Chairman
Committee on Government Operations
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This is in response to your request for comments on S. 2234, a bill which would amend the National Security Act of 1947 by adding a new section 102(g). Subsections 102(g)(1)(A), (B) and (C) of this proposed new section attempt to further specify limitations on CIA domestic activities which are now generally covered by the proviso in Section 102(d)(3) of the National Security Act prohibiting police, subpoena, law-enforcement powers, or internal-security functions. Subsection 102(g)(1)(D) would prohibit the Agency from engaging in any covert actions unless specifically approved by the CIA oversight subcommittees of the Committees on Armed Services and Appropriations.

Proposed subsections 102(g)(1)(A), (B) and (C) would preclude the Agency from (1) carrying out, directly and indirectly, either alone or in cooperation with any other agency, any police-type, law-enforcement or internal-security activity within the United States; (2) providing assistance of any kind, directly or indirectly, to any Federal, state or local agency engaged in police-type, law-enforcement or internal-security functions in the United States, without the advance approval of the Agency's congressional oversight committees; or (3) participating in any illegal activity within the United States. ;

Although the focus of CIA is on foreign intelligence, the Agency must of necessity conduct certain important and legitimate activities in the United States. These include screening applicants and contacts; interviewing American citizens who willingly share foreign intelligence



information in their possession with their Government; collecting foreign intelligence from foreigners; establishing support structures necessary to foreign intelligence activities abroad; and providing assistance to, but not participating in, the counterintelligence program of the Federal Bureau of Investigation with respect to foreigners. Our concern is that any changes in the National Security Act be sufficiently precise so as not to curtail such important and legitimate activities.

The language of proposed subsections 102(g)(1)(A) and (B) is not sufficiently precise, but rather is so vague and overbroad that it could undermine these legitimate domestic activities. For example, the prohibition against undefined "police-type" operations or activities could be interpreted to preclude essential security investigations, or even preliminary investigations of CIA employees suspected of foreign intelligence connections.

Furthermore, although the Federal Bureau of Investigations has primary authority for counterintelligence within the United States, a close working relationship between the FBI and the CIA is essential for the overall success of this activity. Counterintelligence information collected overseas is routinely channeled to the FBI. This transfer of information could be considered "assistance of any kind," prohibited by section proposed subsection 102(g)(1)(B). It could also be considered indirect cooperation in an internal security activity, prohibited in proposed subsection 102(g)(1)(A). Thus, these provisions could severely restrict our nation's counterintelligence program. Moreover, I believe the requirement of prior approval of the congressional oversight committees before specific acts are taken would raise serious constitutional separation of powers questions.

Proposed subsection 102(g)(1)(C) states that the Agency shall not "participate, directly or indirectly, in any illegal activity within the United States." I believe this section is inappropriate and unnecessary.

Finally, subsection 102(g)(1)(D) would require the prior approval of each of the Agency's congressional oversight committees before a covert action could be undertaken at the direction of the President. I am

strongly opposed to such a requirement and believe such procedures would be constitutionally unsound. Under existing law (Section 662 of the Foreign Assistance Act of 1961, as amended), all covert actions are reported in a timely fashion to certain committees of Congress. While I am opposed to certain of the details in Section 662, I believe it reflects the proper relationship between the Executive and Legislative branches with respect to covert action.

Mr. Chairman, changes in the National Security Act are desirable so that the permissible areas of CIA domestic activity will be more clearly delineated, and future mistakes avoided. As discussed above, S. 2234 would not clarify, but rather add to, the ambiguities in the Act and impinge upon legitimate domestic activities undertaken by the Agency in support of its foreign intelligence mission. In addition, S. 2234 would subject covert action to unwise and constitutionally suspect procedures. For these reasons I oppose enactment of this legislation.

The Office of Management and Budget has advised there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

George Bush
Director

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